

PHILIP A. AMICONE
MAYOR



CITY HALL
YONKERS, NEW YORK 10701

DAN SCHORR
INSPECTOR GENERAL

Ph: 914-377-6107
Fax: 914-377-6990

DEPARTMENT OF
INSPECTOR GENERAL
CITY OF YONKERS

TO: Philip A. Amicone, Mayor

CC: Bernard A. Pierorazio, Superintendent of Schools
Paresh Patel, Board of Education President
Chuck Lesnick, City Council President
All City Council Members

FROM: Dan Schorr, Inspector General *DS*

SUBJECT: Teacher Overtime Policy and Payments

DATE: December 12, 2011

This report is issued in response to anonymous complaints received by the Department of Inspector General (IG) regarding overtime payments to Yonkers Public Schools (YPS) teachers and salaries paid to YPS retired teachers who have been re-hired as hourly employees while they collect New York State pensions.

Summary of Findings and Recommendations

The School District appears to be effectively enforcing its current teacher overtime policy. However, exceptions to the overtime policy allow for extra teacher earnings that in some cases significantly exceed the \$15,000 stated overtime cap. All extra pay that is not part of a teacher's base salary should be counted towards the annual overtime cap. Furthermore, the School District's stated rationales for how much to pay teachers for summer hours and weekend overtime are inconsistent and lack clarity.

Background

Our City's schools are experiencing a terrible financial crisis, with important programs cut and many teacher jobs eliminated, to the detriment of Yonkers school children. The IG received anonymous complaints from individuals purporting to be laid-off Yonkers teachers, alleging that

certain teachers have been paid excessive overtime while other teachers have lost their jobs. They assert that the overtime funds could be better spent on saving the jobs of laid-off teachers, and question why publicly available records show teacher “overtime” earnings in excess of the \$15,000 YPS cap. In addition, the complaints cite the large number of retired teachers who have been re-hired by the YPS as hourly employees, once again instead of saving other teacher jobs. One of the complaint letters states, “There are many people (not retired) who would love these jobs and work part-time or full-time. But these jobs will never become available if YPS and the City of Yonkers keep hiring retirees.”

The objectives of the review were to:

1. Analyze YPS overtime payments to teachers and the YPS overtime policy
2. Determine whether the School District is adhering to the overtime policy and whether the policy can be improved
3. Evaluate the summer payments to teachers and how they relate to the overtime policy
4. Ascertain how many retired teachers have been re-hired as hourly employees, where they are assigned, and why laid-off teachers were not offered these positions

In the course of our review, we looked at the YPS teacher contract and related documents, salary records for teachers, detailed breakdowns of select teacher overtime payments, and other pertinent information. We prepared Excel schedules to analyze those who received the most overtime and other relevant data. Additionally, our office interviewed numerous School District officials including Superintendent Bernard Pierorazio and Chief Administrative Officer Joseph Braccitta.

Discussion

Overtime Policy

The School District has an overtime policy that sets caps on how much overtime all employees can earn. According to the policy, each teacher “cannot earn more than fifteen thousand dollars (\$15,000) for any year (September 1 to June 30), excluding summer programs (July 1 – August 31), and the D1 Schedule.”

The “D1 Schedule” refers to a section of the contract between the Board of Education (BOE) and the Yonkers Federation of Teachers (YFT) for “additional pay for coaches of varsity athletics and intramural sports.” Thus, overtime for teachers is limited to \$15,000 per academic year, and payment for summer work and coaching does not count towards the cap. Administrators similarly have a \$15,000 overtime limit for each academic year with the same exclusion of summer earnings. Ten month non-certificated personnel, such as safety officers, nurses, and clerical staff, have a \$12,000 cap on annual overtime, excluding any summer earnings, with overtime defined as “time paid other than straight pay.”

However, the overtime cap for other personnel is more limited. Twelve month non-certificated personnel, such as custodial and maintenance employees, have a \$15,000 cap on overtime for the entire calendar year, including the summer. Overtime earnings in the summer count towards the cap, while extra teacher summer earnings do not count towards their cap.

“Overtime” Earnings by Teachers

Despite the \$15,000 annual cap on teacher overtime, publicly available records, such as those on Lohud.com, list higher amounts. For example, in calendar year 2008, published overtime figures for two of the teachers mentioned in one of the complaint letters were \$31,730 for “Teacher A” and \$21,472 for “Teacher B” (actual names withheld). Other teachers also have overtime amounts that exceed \$15,000.

We asked the School District to explain these figures. For weeks we sought a breakdown of overtime payments to these two teachers for one calendar year, and were provided with inconsistent and incomplete responses to our repeated requests. Only after we informed the School District that we intended to subpoena this basic information did it finally provide accurate and complete details of overtime payments for these two individuals.

Data from the School District showed that in 2008 Teacher A earned \$31,730 in what was publicly classified as “overtime” but that \$19,771 was earned during the summer, thus excluded from the overtime cap. Teacher A earned \$11,959 in overtime during the school year and therefore did not exceed the School District overtime cap.

Similarly, Teacher B earned \$21,472 in 2008 “overtime” according to public records. In this case, \$14,796 was earned in the summer and \$6,676 was earned during the school months, well under the overtime cap.

We asked School District officials why extra summer payments for teachers and administrators do not count towards their overtime cap but summer overtime for non-certificated personnel such as CSEA workers do count towards their overtime cap. We were told that “teachers and administrators work a 10 month school year and are salaried employees” and that they “are not employed by us for July and August as salaried employees, therefore they cannot be earning ‘overtime’ pay.” However, even though teachers are supposedly “not employed” in the summer “as salaried employees,” they are paid during the summer based on their annual salaries, as discussed below.

We recommend that all extra pay that is not part of a teacher’s regular salary, including payments for D1 Schedule work and summer programs, be counted towards the overtime cap. As with CSEA workers, all income beyond their base salary should be considered “overtime”. This change would lead to a more transparent and accurate system of monitoring and fairly distributing overtime.

Summer Salary for Teachers

The most recent teacher contract states that, as of July 1, 2010, “summer school, night school and all hourly rated teachers’ duties will be paid” at the “hourly rate” of \$49.87. Previous contractual hourly rates and their effective dates were \$43.86 (July 1, 2007), \$44.74 (February 1, 2008), \$45.86 (July 1, 2008), \$47.01 (February 1, 2009), and \$48.42 (July 1, 2009).

However, summer pay for Teachers A and B (and others) were at the higher per diem rate of 1/200 of their annual salary, not the hourly rate that is specified for “summer school, night school and hourly rated teachers’ duties” in the teacher contract. In the summer of 2008, Teacher A earned

approximately \$581.51 per day and Teacher B earned approximately \$592.40 per day, rather than the \$45.86 per hour, that was set forth in the contract.

We asked the School District why summer teachers were paid at the higher 1/200 per diem rate during the summer instead of the hourly rate from the contract. The School District provided an unsigned final draft copy of a 1991 agreement which includes a section entitled “extension of normal teaching duties”. This section states that “teachers who perform full time (6 hours) duties which are the same as their regular duties during the summer or other non-regularly scheduled teaching days shall be paid at the rate of 1/200 of their normal pay for each day worked.” Thus, for working a six-hour summer day, Teacher A would receive a per diem payment of \$581.51, rather than \$275.16 based on the hourly rate of \$45.86. Teacher A would thus earn approximately \$96.92 per hour, over twice the hourly summer rate in the contract.

The School District asserts that this 1991 agreement trumps the hourly rate set forth in the current teacher contract. It also wrote that “the YFT has been successful in two arbitrations defining weekend and summer work as being calculated at 1/200.” We asked for copies of these arbitration rulings and delayed publication of this report to give the School District more time to comply with this request. The School District ultimately provided one arbitration ruling that addressed payments “for social histories submitted by School Social Workers and for psychological evaluations submitted by School Psychologists.” However, the ruling did not address summer school teachers or the contract’s clear, specific language providing for hourly pay for teacher summer work. The ruling itself noted that “at issue in the instant case” was how much “the District pays for work product delivered, not for specific hours spent performing tasks assigned by the District.” The ruling does nothing to contradict the appearance that, based on the plain language of the contract, the School District has been expending significantly more funds for summer teachers than are specified in the contract at a time that it is also unsuccessfully asking teachers for a salary freeze.

There seem to be contradictions between the contract, the 1991 agreement, and the School District overtime policy. The contract that was effective beginning July 1, 2007 states that “summer school, night school and all hourly teachers’ duties will be paid” at an “hourly rate” that is currently \$49.87. The 1991 agreement, which predates the contract by approximately sixteen years, states that teachers performing “regular teaching duties during the summer...shall be paid at the rate of 1/200 of their normal pay for each day worked.”

Thus, the School District utilizes an agreement for the “extension of normal teaching duties” that refers to paying teachers for “regular teaching duties during the summer” while it excludes such earnings from the overtime cap because the same teachers “are not employed by [the School District] for July and August as salaried employees.” In other words, they are reportedly not salaried employees in the summer months and thus are not subject to the overtime cap for summer earnings, yet they are paid their regular per diem salary during the summer, while the contract calls for a lower hourly rate to be paid.

Furthermore, during the regular school year, if teachers work in the evening, they are paid at the contractual hourly rate. If teachers work on the weekend, they are paid at the higher per diem rate of 1/200 of their annual salary. We inquired as to why there are different payment structures, and the School District initially responded:

“In the teacher contract under the section sick leave, it makes reference that teachers who have used all allowable sick time will have 1/200 time deducted per day. The accounting/payroll department used this determination to determine the rate that should be paid as the weekend rate. This procedure has been an ongoing practice in the district.”

The School District subsequently added that “teacher salary is based on 200 days of employment (September through June), therefore 1/200 is utilized.”

We recommend that the School District adopt a clear policy that specifically addresses weekend payments.

Former YPS Teachers Hired on a Part-Time Basis

We asked the School District to provide figures for how many retirees have been hired as hourly employees and other related information. As with some of our earlier requests, we repeatedly asked for these answers over the course of weeks and the School District failed to provide them. Finally, we subpoenaed the information on the morning of November 3rd and received a response approximately two hours later.

According to School District officials, currently sixty-seven teacher retirees are employed on a part-time basis. Twenty-four are assigned to classroom/instructional duties and forty-three are assigned to non-classroom responsibilities. Meanwhile, School District officials report that only three laid-off teachers have been similarly re-hired as hourly employees.

The complaint letters asked why more laid-off teachers were not re-hired at hourly salaries for jobs that were given to retired teachers. In its response to us, the School District stated:

“Due to the budget crisis, the philosophy employed was to bring employees back to their non-classroom positions and serve in similar capacities at a significant savings to the district. These employees were limited to the total salary allowable by both retirement systems, except in cases where there were age appropriate to earn beyond the cap. No additional benefits needed to be paid to these employees by the district. Therefore, some retirees were hired and served in positions that they were previously experienced as the district did not have the resources to hire replacements....To date the majority of these positions have still not been filled.”

Under New York State law, retirees under sixty-five years old can receive a state pension while they earn up to \$30,000 from the School District in a calendar year. Annual earnings are not limited for retired employees age sixty-five and over. We reviewed records of 2011 year-to-date earnings for currently employed retirees and confirmed that this limit is being enforced. According to School District records, ten retirees have earned over \$30,000 this calendar year, with eight of them being over sixty-five years old, one receiving a state pension waiver to earn more than the \$30,000 cap, and one exceeding the cap by \$82.50.

Conclusions and Recommendations

Our analysis of the overtime policy and payments in the School District leads us to conclude that while the current teacher overtime policy appears to be enforced, exceptions allow significant extra pay beyond the amount permitted under the overtime cap. Such extra pay undermines the spirit of the cap and prevents the equitable distribution of teacher earnings. Furthermore, the School District should clarify and codify the basis for payments to teachers for summer and weekend work. In addition, the School District should be more responsive, timely, and accurate when information is requested by the IG.

We make the following specific recommendations:

- All extra pay that is not part of a teacher's base salary, including payments for D1 Schedule work and summer earnings, should be counted towards the annual overtime cap.
- Summer teachers should be paid based on the hourly rate that is set forth in the teacher contract, or the contract should be amended to reflect any superseding payment agreement or arbitration ruling between the BOE and the YFT.
- The School District should adopt a clear policy that specifically addresses weekend payments.
- The School District should be more responsive when providing information to the IG. Answers to IG inquiries should be timely, accurate, and complete without the IG having to resort to issuing a subpoena for routine information requests.